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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/667,877

09/22/2003

David Boyd Melvin

MELV / 27US

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EXAMINER

ISABELLA, DAVID J

ART UNIT

PAPER NUMBER

3738

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/23/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/667,877	<b>Applicant(s)</b> MELVIN, DAVID BOYD	
	<b>Examiner</b> DAVID J. ISABELLA	<b>Art Unit</b> 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 9-24 is/are pending in the application.
- 4a) Of the above claim(s) 12, 14, 15, 21, 23 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-11, 13, 16, 17, 18, 19, 20, 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. <u>31707</u>                                |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application  |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                           |

***Supplemental Office Action***

Pursuant to telephone call from applicant's representative, examiner is providing applicant with a correct and full response to applicant's traversal of the outstanding restriction mailed 8/18/2006. No changes were made to the rejections to the claims as presented in the previous Office action.

***Election/Restrictions***

Claims 1-8,12,14,15,21-24 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention/species, there being no allowable generic or linking claim. Election was made **with** traverse in the reply filed on 10/19/2006.

Applicant's election with traverse of the claims in the reply filed on 10/17/2006 is acknowledged. The traversal is on the ground(s) that the two species (i.e., a dome with or without flared extensions) would likely encompass a search for both and resources would be sufficient to address all issues in one case is not convincing. The two species are patentably distinct. If applicant believes that the two species are not patentably distinct, then applicant is invited to state on the record that the species are not distinct and equivalent. The basis for restrictions between species does not require separate search but does require the species to be patentably distinct. Thus the examiner has met the requirement for the basis of a restriction between species.

With respect to Group 2, attachment or securing means as illustrated in figures in each of figure 4a;4b;5a;5b;5c are clearly distinct from one another. Whether or not

the claims specifically recite any one or all of the embodiments are not required for requiring a restriction to the same. The purpose of the species restriction, for the purpose of prosecution, is to reduce the burden to the office in the case that applicant presents claims to all species in various scope. Accordingly, applicant is invited to state for the record that the above embodiments are not distinct and equivalent, if applicant believes that the examiner is in error.

With respect to Group 3, again applicant is invited to state for the record that the above embodiments are not distinct and equivalent, if applicant believes that the examiner is in error.

The argument that the searching for Groups 1-3 would not be unduly burdensome for the present Examiner is not the basis by which a restriction between species is invoked by the Office. Nonetheless, additional searching would be required as well as the review and analysis of more claims would provide a substantial burden to the Office. Applicant's argument, that the previous Examiner did not require a restriction, is moot.

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9-11, 13, 16-20 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Hellman et al [5558617].

Hellman et al discloses a heart-mounted structure for assisting the operation of a natural heart comprising: an assistive heart-actuating dome structure that assists actuation of the heart, the dome structure configured for being coupled with a surface of a ventricular portion of the heart, the dome structure having at least one opening formed therein; and the dome structure, proximate the opening, being configured to interface with at least one of a chamber and a great vessel of the heart. Though the device of Hellman et al is not shown to be placed on the basal surface of the heart, the device is capable of being placed at the basal surface of the heart. The structure as broadly claimed by applicant is fully recognized by the same as illustrated in Hellman et al.

Claims 10 and 11, Hellman et al utilizes flexible envelope and rigid C-shaped stays as sub-elements of the structure.

Claim 13, there are two openings forming the truncated dome of Hellman et al.

Claims 16-20, see pressure pads 130 of Hellman, et al.

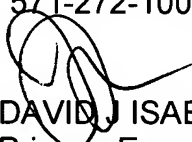
Claim 22, see separated segments in figure 14A.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J. ISABELLA whose telephone number is 571-272-4749. The examiner can normally be reached on MONDAY-FRIDAY.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CORRINE MCDERMOTT can be reached on 571-272-4754. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



DAVID J. ISABELLA  
Primary Examiner  
Art Unit 3738

DJI  
3/17/2007